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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

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UNITED STATES OF AMERICA,

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Plaintiff - Appellee,

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v.

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JAMES L. MCPHADEN,

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Defendant - Appellant.

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NO. C05-5517JET  
CR95-5828JET

ORDER

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THIS MATTER comes on before the above-entitled Court upon remand from the Ninth Circuit Court of Appeals.

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The Ninth Circuit Court of Appeals has directed the district court to issue or decline to issue a certificate of appealability in C05-5517JET.

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1 Having considered the entirety of the record and files herein, it is hereby  
2 ORDERED that the court declines to issue a Certificate of Appealability because Defendant  
3 McPhaden has failed to make “a substantial showing of the denial of a constitutional right.” 28  
4 U.S.C. §2253(c)(2).

5 IT IS SO ORDERED.

6 The clerk of the court is instructed to send uncertified copies of this Order to all counsel of  
7 record.

8 DATED this 28<sup>st</sup> day of September, 2005.

9  
10 /s JACK E. TANNER

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12 JACK E. TANNER  
13 SR. UNITED STATES DISTRICT JUDGE  
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